

SEP 07 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JOHN F. CORCORAN, CLERK
BY:

[Signature]
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ROBERT E. SMITH,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

) Case No. 7:05cv00553
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MEMORANDUM OPINION AND
FINAL ORDER

By: Samuel G. Wilson
United States District Judge

Petitioner Robert E. Smith claims to bring this "motion to amend and reduce sentence" pursuant to Federal Rule of Civil Procedure 60(b). In November 1999, Smith filed a petition pursuant to 28 U.S.C. § 2255, which the court dismissed. Smith filed a second § 2255 petition in January 2005, and, finding that the Fourth Circuit had not authorized Smith to file a successive § 2255 petition, the court dismissed it. Smith styles his current suit as a motion under Federal Rule of Civil Procedure 60(b); however, it is nothing more than a collateral attack on his conviction and sentence. The court therefore views it as a successive § 2255 petition. See Gonzalez v. Crosby, 125 S.Ct. 2641 (2005). Because Smith has neither alleged nor shown that the Fourth Circuit authorized a successive petition, it is hereby **ORDERED** and **ADJUDGED** that Smith's motion is **DENIED** and **DISMISSED** as a successive § 2255 petition.

ENTER: This 7th day of September, 2005.

[Signature]
UNITED STATES DISTRICT JUDGE